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Paper No. 9

In re Application of :
Josep Torrents I Comas :
Application No. 10/089,806 :
Filed: August 13, 2002 :
Attorney Docket No. P/2789-58 :
: DECISION ON PETITION


This is a decision on the petition filed by on October 14, 2003 by which petitioner requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated March 31, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioner alleges that this application is not abandoned because a timely and proper reply to the Office letter in question was in fact filed. Petitioner supports this allegation by furnishing a copy of the reply and request for a two month extension of time. It is noted that the extension has affixed thereto a 37 CFR 1.8(a) certificate of mailing dated September 2, 2003, the first business day after August 31, 2003. It is considered that the 37 CFR 1.8(a) certificate refers to both papers. Petitioner has also furnished a copy of a post card receipt for the filing of papers on September 5, 2003 which references this application, refers to a two month extension of time, but also refers to the filing of a Notice of Missing Parts. As a response to a Notice of Missing Parts was not filed on September 2, 2003, but was previously filed in August, 2003, the post card receipt is considered to refer to a Notice of Missing Parts in error and is taken to confirm the applicability of the 37 CFR 1.8(a) certificate to both the extension and the reply. Therefore, in accordance with 37 CFR 1.8(b), it is clear that petitioner has established the timely filing of a reply to the Office letter in question.

Based upon the evidence submitted with the petition, it is clear that this application is not in fact abandoned. Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the examiner for action on the reply filed on September 5, 2003, certificate of mailing date September 2, 2003.

PETITION GRANTED.


E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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